



# House of Representatives

General Assembly

**File No. 286**

January Session, 2013

Substitute House Bill No. 6355

*House of Representatives, April 2, 2013*

The Committee on Banks reported through REP. TONG of the 147th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

## ***AN ACT CONCERNING HOMEOWNER PROTECTION RIGHTS.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 49-31k of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective from passage*):

3 As used in this section and sections 49-31l to 49-31o, inclusive, as  
4 amended by this act, and sections 5 and 6 of this act:

5 (1) "Mortgagor" means: (A) The owner-occupant of one-to-four  
6 family residential real property located in this state who is also the  
7 borrower under a mortgage encumbering such residential real  
8 property, except an heir or occupying nonowner of a property  
9 encumbered by a reverse annuity mortgage, which is the primary  
10 residence of such owner-occupant, or (B) a religious organization that  
11 is (i) the owner of real property located in this state, and (ii) the  
12 borrower under a mortgage encumbering such real property;

13 (2) "Residential real property" means a one-to-four family dwelling,

14 occupied as a residence by a mortgagor;

15 (3) "Mortgagee" means the [original lender or servicer under a  
16 mortgage, or its successors or assigns, who is the holder of any  
17 mortgage] owner or servicer of the debt secured by a mortgage on  
18 residential real property or real property owned by a religious  
19 organization securing a loan made primarily for personal, family,  
20 religious or household purposes that is the subject of a foreclosure  
21 action;

22 (4) "Authority" means the Connecticut Housing Finance Authority  
23 created under section 8-244;

24 (5) "Mortgage assistance programs" means the mortgage assistance  
25 programs developed and implemented by the authority in accordance  
26 with sections 8-265cc to 8-265kk, inclusive, 8-265rr and 8-265ss; [and]

27 (6) "Religious organization" means an organization that meets the  
28 religious purposes test of Section 501(c)(3) of the Internal Revenue  
29 Code of 1986; [.]

30 (7) "Objectives of the mediation program" (A) include (i) a  
31 determination as to whether or not the parties can reach an agreement  
32 that will (I) avoid foreclosure by means that may include consideration  
33 of any loss mitigation options available through the mortgagee, or (II)  
34 expedite or facilitate the foreclosure in a manner acceptable to the  
35 parties, and (ii) an expectation that all parties shall endeavor to reach  
36 such determination with reasonable speed and efficiency by  
37 participating in the mediation process in good faith, but (B) shall not  
38 include unreasonable and unnecessary delays. A failure to participate  
39 in good faith does not necessarily include acting with malice, intent to  
40 injure or otherwise in bad faith; and

41 (8) "Ability to mediate" means an exhibition on the part of the  
42 relevant person of a general willingness, including a general ability, to  
43 participate in the mediation process in a manner consistent with the  
44 objectives of the mediation program and in conformity with any

45 obligations imposed in accordance with subdivision (2) of subsection  
46 (b) or (c), as applicable, of section 49-31n, as amended by this act,  
47 including, but not limited to, a general willingness and general ability  
48 to respond to questions and specify or estimate when particular  
49 decisions will be made or particular information will be furnished,  
50 along with a general familiarity with the loan file and the loss  
51 mitigation options that are available to the mortgagor.

52 Sec. 2. Section 49-31l of the general statutes is repealed and the  
53 following is substituted in lieu thereof (*Effective from passage*):

54 (a) Prior to July 1, 2014: (1) Any action for the foreclosure of a  
55 mortgage on residential real property with a return date during the  
56 period from July 1, 2008, to June 30, 2009, inclusive, shall be subject to  
57 the provisions of subsection (b) of this section, and (2) any action for  
58 the foreclosure of a mortgage on (A) residential real property with a  
59 return date during the period from July 1, 2009, to June 30, 2014,  
60 inclusive, or (B) real property owned by a religious organization with a  
61 return date during the period from October 1, 2011, to June 30, 2014,  
62 inclusive, shall be subject to the provisions of subsection (c) of this  
63 section.

64 (b) (1) Prior to July 1, [2012] 2014, when a mortgagee commences an  
65 action for the foreclosure of a mortgage on residential real property  
66 with a return date during the period from July 1, 2008, to June 30, 2009,  
67 inclusive, the mortgagee shall give notice to the mortgagor of the  
68 foreclosure mediation program established in section 49-31m by  
69 attaching to the front of the foreclosure complaint that is served on the  
70 mortgagor: (A) A copy of the notice of the availability of foreclosure  
71 mediation, in such form as the Chief Court Administrator prescribes,  
72 and (B) a foreclosure mediation request form, in such form as the Chief  
73 Court Administrator prescribes.

74 (2) Except as provided in subdivision (3) of this subsection, a  
75 mortgagor may request foreclosure mediation by submitting the  
76 foreclosure mediation request form to the court and filing an  
77 appearance not more than fifteen days after the return date for the

78 foreclosure action. Upon receipt of the foreclosure mediation request  
79 form, the court shall notify each appearing party that a foreclosure  
80 mediation request form has been submitted by the mortgagor.

81 (3) The court may grant a mortgagor permission to submit a  
82 foreclosure mediation request form and file an appearance after the  
83 fifteen-day period established in subdivision (2) of this subsection, for  
84 good cause shown. [, except that no foreclosure mediation request  
85 form may be submitted and no appearance may be filed more than  
86 twenty-five days after the return date.]

87 (4) No foreclosure mediation request form may be submitted to the  
88 court under this subsection on or after July 1, [2012] 2014.

89 (5) If at any time on or after July 1, 2008, but prior to July 1, [2012]  
90 2014, the court determines that the notice requirement of subdivision  
91 (1) of this subsection has not been met, the court may, upon its own  
92 motion or upon the written motion of the mortgagor, issue an order  
93 that no judgment may enter for fifteen days during which period the  
94 mortgagor may submit a foreclosure mediation request form to the  
95 court.

96 (6) Notwithstanding any provision of the general statutes or any  
97 rule of law to the contrary, prior to July 1, [2012] 2014, no judgment of  
98 strict foreclosure nor any judgment ordering a foreclosure sale shall be  
99 entered in any action subject to the provisions of this subsection and  
100 instituted by the mortgagee to foreclose a mortgage on residential real  
101 property unless: (A) Notice to the mortgagor has been given by the  
102 mortgagee in accordance with subdivision (1) of this subsection and  
103 the time for submitting a foreclosure mediation request form has  
104 expired and no foreclosure mediation request form has been  
105 submitted, or if such notice has not been given, the time for submitting  
106 a foreclosure mediation request form pursuant to subdivision (2) or (3)  
107 of this subsection has expired and no foreclosure mediation request  
108 form has been submitted, or (B) the mediation period set forth in  
109 subdivision (b) of section 49-31n has expired or has otherwise  
110 terminated, whichever is earlier.

111 (7) None of the mortgagor's or mortgagee's rights in the foreclosure  
112 action shall be waived by the mortgagor's submission of a foreclosure  
113 mediation request form to the court.

114 (c) (1) Prior to July 1, 2014, when a mortgagee commences an action  
115 for the foreclosure of a mortgage on residential real property with a  
116 return date on or after July 1, 2009, or, with respect to real property  
117 owned by a religious organization, a return date on or after October 1,  
118 2011, the mortgagee shall give notice to the mortgagor of the  
119 foreclosure mediation program established in section 49-31m, as  
120 amended by this act, by attaching to the front of the writ, summons  
121 and complaint that is served on the mortgagor: (A) A copy of the  
122 notice of foreclosure mediation, in such form as the Chief Court  
123 Administrator prescribes, (B) a copy of the foreclosure mediation  
124 certificate form described in subdivision (3) of this subsection, in such  
125 form as the Chief Court Administrator prescribes, (C) a blank  
126 appearance form, in such form as the Chief Court Administrator  
127 prescribes, [and] (D) with respect to an action for the foreclosure of a  
128 mortgage on residential real property with a return date on or after  
129 October 1, 2011, to September 30, 2013, inclusive, a mediation  
130 information form and a notice containing contact information for  
131 authority-approved consumer credit counseling agencies, which form  
132 and notice shall be in such form as the Chief Court Administrator  
133 prescribes, [. Such mediation information form shall be] and which  
134 form shall be designed to elicit current financial information and such  
135 other nonfinancial information from the mortgagor as the Chief Court  
136 Administrator, in consultation with representatives from the banking  
137 industry and consumer advocates, determines will be useful to the  
138 mediation process. The instructions to the mediation information form  
139 shall explain that the completed mediation information form, along  
140 with accompanying documentation reasonably requested from the  
141 mortgagor by way of such instructions, shall be delivered to the  
142 mortgagee's counsel not later than fifteen business days prior to the  
143 date of the initial mediation session, as identified in the notice  
144 provided pursuant to subdivision (2) of subsection (c) of section 49-  
145 31n, as amended by this act, and (E) for an action to foreclose a

146 mortgage on residential real property with a return date on or after  
147 October 1, 2013, the mediation information form shall instruct the  
148 mortgagor as to the objectives of the mediation program, explain the  
149 preliminary process of meeting with the mediator as described in  
150 subdivision (4) of this subsection, instruct the mortgagor to begin  
151 gathering financial documentation commonly used in foreclosure  
152 mediation for use in meeting with the mediator and in mediation, and  
153 include a notice containing contact information for authority-approved  
154 consumer counseling agencies, which shall be in such form as the  
155 Chief Court Administrator prescribes. The content of the mediation  
156 information form shall be designed by the Chief Court Administrator  
157 in consultation with representatives from the banking industry and  
158 consumer advocates.

159 (2) The court shall issue a notice of foreclosure mediation described  
160 in subdivision (3) of this subsection to the mortgagor not later than the  
161 date three business days after the date the mortgagee returns the writ  
162 to the court.

163 (3) The notice of foreclosure mediation shall instruct the mortgagor  
164 to file the appearance and foreclosure mediation certificate forms with  
165 the court not later than the date fifteen days from the return date for  
166 the foreclosure action. [Such] With respect to actions with a return date  
167 on or after October 1, 2011, to September 30, 2013, inclusive, such  
168 notice shall remind the mortgagor to deliver the completed mediation  
169 information form and the accompanying documentation described in  
170 subdivision (1) of this subsection and encourage such delivery in  
171 advance of the required date. The mediation information form and  
172 accompanying documentation shall not, without the explicit written  
173 instruction of the mortgagor, be publicly available. Such notice of  
174 foreclosure mediation shall be accompanied by materials from the  
175 Department of Banking, as prescribed by the Chief Court  
176 Administrator, which shall describe the community-based resources  
177 available to the mortgagor, including authority-approved housing  
178 counseling agencies that may assist with preparation [of the mediation  
179 information form] for mediation and application for mortgage

180 assistance programs. The foreclosure mediation certificate form shall  
181 require the mortgagor to provide sufficient information to permit the  
182 court to confirm that the defendant in the foreclosure action is a  
183 mortgagor, and to certify that said mortgagor has sent a copy of the  
184 mediation certificate form to the plaintiff in the action.

185 (4) Upon receipt of the mortgagor's appearance and foreclosure  
186 mediation certificate forms, and provided the court confirms the  
187 defendant in the foreclosure action is a mortgagor and that said  
188 mortgagor has sent a copy of the mediation certificate form to the  
189 plaintiff, the court shall [schedule a date for foreclosure mediation in  
190 accordance with subsection (c) of section 49-31n. The court shall issue  
191 notice of such mediation date to all appearing parties] assign a  
192 mediator to the mortgagor and issue notice of such assignment to all  
193 appearing parties. The court shall issue such notice not earlier than the  
194 date five business days after the return date or by the date three  
195 business days after the date on which the court receives the  
196 mortgagor's appearance and foreclosure mediation certificate forms,  
197 whichever is later, except that if the court does not receive the  
198 appearance and foreclosure mediation certificate forms from the  
199 mortgagor by the date fifteen days after the return date for the  
200 foreclosure action, the court shall not [schedule such mediation.]  
201 assign a mediator to the mortgagor. Promptly upon receipt of the  
202 notice of assignment, but not later than the twenty-fourth day  
203 following the return date, the mortgagee or its counsel shall deliver to  
204 the mediator, via electronic mail (A) an account history identifying all  
205 credits and debits assessed to the loan account and any related escrow  
206 account in the immediately preceding twelve-month period and an  
207 itemized statement of the amount required to reinstate the mortgage  
208 loan in accordance with section 49-10a, with accompanying  
209 information, written in plain language, to explain any codes used in  
210 the history and statement which are not otherwise self-explanatory, (B)  
211 the name, business mailing address, electronic mail address, facsimile  
212 number and direct telephone number of an individual able to respond  
213 with reasonable adequacy and promptness to questions relative to the  
214 information submitted to the mediator pursuant to this subdivision,

215 and any subsequent updates to such contact information, which shall  
216 be provided reasonably promptly to the mediator, (C) all reasonably  
217 necessary forms and a list of all documentation reasonably necessary  
218 for the mortgagee to evaluate the mortgagor for common alternatives  
219 to foreclosure that are available through the mortgagee, if any, (D) a  
220 copy of the note and mortgage, (E) information regarding the status of  
221 any pending foreclosure avoidance efforts being undertaken by the  
222 mortgagee, (F) a copy of any loss mitigation affidavit filed with the  
223 court, and (G) at the mortgagee's option, (i) the history of foreclosure  
224 avoidance efforts with respect to the mortgagor, (ii) information  
225 regarding the condition of mortgaged property, and (iii) such other  
226 information as the mortgagee may determine is relevant to meeting the  
227 objectives of the mediation program. Following the mediator's receipt  
228 of such information, the court shall schedule a meeting with the  
229 mediator and the mortgagor and shall endeavor to schedule such  
230 meeting on or prior to the thirty-eighth day following the return date.  
231 The notice of such meeting shall include the forms and account history  
232 supplied by the mortgagee and instruct the mortgagor to complete the  
233 forms prior to the meeting and furnish the documentation contained in  
234 the list at the meeting. At such meeting, the mediator shall review such  
235 forms and documentation with the mortgagor, along with the  
236 information supplied by the mortgagee, in order to discuss the options  
237 available to the mortgagor and assist the mortgagor in completing the  
238 forms and furnishing the documentation necessary for the mortgagee  
239 to evaluate the mortgagor for alternatives to foreclosure. The mediator  
240 may elect to schedule subsequent meetings with the mortgagor and  
241 determine whether any mortgagor may be excused from an in-person  
242 appearance at such subsequent meeting. On or prior to the seventy-  
243 third day following the return date, the mediator shall facilitate the  
244 delivery of the forms and documentation to the mortgagee's counsel  
245 via facsimile or electronic mail and, at the mortgagee's election,  
246 directly to the mortgagee per the mortgagee's instruction, and  
247 determine, based on the mortgagor's attendance at the meetings and  
248 the extent the mortgagor completed the forms and furnished the  
249 documentation contemplated in this subdivision, or failed to perform



250 such tasks through no fault of the mortgagee, and file a report with the  
251 court indicating, (I) whether mediation shall be scheduled with the  
252 mortgagee, (II) whether the mortgagor attended scheduled meetings  
253 with the mediator, (III) whether the mortgagor fully or substantially  
254 completed the forms and furnished the documentation requested by  
255 the mortgagee, (IV) the date on which the mortgagee supplied the  
256 forms and documentation to the mediator, and (V) any other  
257 information the mediator determines to be relevant to the objectives of  
258 the mediation program. No meeting or communication between the  
259 mediator and mortgagor under this subdivision shall be treated as an  
260 impermissible ex parte communication. If the mediator determines  
261 that the mortgagee shall participate in mediation, the court shall  
262 promptly issue notice to all parties of such determination and schedule  
263 a mediation session between the mortgagee and mortgagor in  
264 accordance with subsection (c) of section 49-31n, as amended by this  
265 act, to be held not later than five weeks following the final meeting  
266 between the mediator and the mortgagor. If the mediator determines  
267 that no sessions between the mortgagee and mortgagor shall be  
268 scheduled, the court shall promptly issue notice to all parties regarding  
269 such determination and mediation shall be terminated. Any mortgagor  
270 wishing to contest such determination shall petition the court and  
271 show good cause for reinclusion in the mediation program, including,  
272 but not limited to, a material change in financial circumstances or a  
273 misapprehension of facts by the mediator.

274 (5) Notwithstanding the provisions of this subsection, the court may  
275 refer a foreclosure action brought by a mortgagee to the foreclosure  
276 mediation program at any time, for good cause shown, provided the  
277 mortgagor has filed an appearance in said action and further provided  
278 the court shall, not later than the date three business days after the date  
279 on which it makes such referral, send a notice to each appearing party  
280 [scheduling the first foreclosure mediation session for a date not later  
281 than the date thirty-five days from the date of such referral] assigning  
282 a mediator and requiring the parties to participate in the premediation  
283 process described in subdivision (4) of this subsection, with the court  
284 establishing deadlines to ensure that the premediation process is to be

285 completed by the parties as expeditiously as the circumstances warrant  
286 and permit. When determining whether good cause exists, the court  
287 shall consider whether the parties are likely to benefit from mediation  
288 and, in the case of a referral after prior attempts at mediation have  
289 been terminated, whether there has been a material change in  
290 circumstances.

291 (6) Notwithstanding any provision of the general statutes or any  
292 rule of law, prior to July 1, 2014, (A) for the period of time which shall  
293 not exceed eight months from the return date, the mortgagor shall be  
294 permitted to file an answer, special defenses or counterclaims, but no  
295 mortgagee or mortgagor shall make any motion, request or demand  
296 with respect to the other, except those motions, requests or demands  
297 that relate to the mediation program described in section 49-31m, as  
298 amended by this act, and the mediation sessions held pursuant to such  
299 program, provided (i) a mortgagor seeking to contest the court's  
300 jurisdiction may file a motion to dismiss and the mortgagee may object  
301 to such motion to dismiss in accordance with applicable law and the  
302 rules of the courts, and (ii) if the mortgagor elects to make any other  
303 motion, request or demand with respect to the mortgagee, the eight-  
304 month limit shall no longer apply to either party; and (B) no judgment  
305 of strict foreclosure nor any judgment ordering a foreclosure sale shall  
306 be entered in any action subject to the provisions of this subsection and  
307 instituted by the mortgagee to foreclose a mortgage on residential real  
308 property or real property owned by a religious organization unless: (i)  
309 The mediation period set forth in subsection (c) of section 49-31n, as  
310 amended by this act, has expired or has otherwise terminated,  
311 whichever is earlier, and, if fewer than eight months has elapsed from  
312 the return date at the time of termination, fifteen days have elapsed  
313 since such termination, or (ii) the mediation program is not otherwise  
314 required or available. Nothing in this subdivision shall affect any  
315 motion made or any default or judgment entered on or before June 30,  
316 2011.

317 (7) With respect to foreclosure actions with a return date on or after  
318 July 1, 2011, to June 30, 2014, inclusive, notwithstanding any provision

319 of the general statutes or any rule of law to the contrary, the mortgagee  
320 shall be permitted [, on or before July 1, 2014, and] following the eight-  
321 month or fifteen-day period described in subdivision (6) of this  
322 subsection, to simultaneously file, as applicable, (A) a motion for  
323 default, and (B) a motion for judgment of strict foreclosure or a motion  
324 for judgment of foreclosure by sale with respect to the mortgagor in  
325 the foreclosure action.

326 (8) None of the mortgagor's or mortgagee's rights in the foreclosure  
327 action shall be waived by participation in the foreclosure mediation  
328 program.

329 Sec. 3. Section 49-31m of the general statutes is repealed and the  
330 following is substituted in lieu thereof (*Effective from passage*):

331 The Chief Court Administrator shall establish in each judicial  
332 district a foreclosure mediation program in actions to foreclose  
333 mortgages on residential real property or real property owned by a  
334 religious organization. Such foreclosure mediation shall (1) address all  
335 issues of foreclosure, including, but not limited to, reinstatement of the  
336 mortgage, disposition of the property through means other than the  
337 foreclosure process, including short sales and deeds in lieu of  
338 foreclosure, assignment of law days, assignment of sale date,  
339 restructuring of the mortgage debt and foreclosure by decree of sale,  
340 and (2) be conducted by foreclosure mediators who (A) have a duty to  
341 be unbiased and are employed by the Judicial Branch, (B) are trained  
342 in mediation and all relevant aspects of the law, as determined by the  
343 Chief Court Administrator, (C) have knowledge of the community-  
344 based resources that are available in the judicial district in which they  
345 serve, and (D) have knowledge of the mortgage assistance programs.  
346 Such mediators may refer mortgagors who participate in the  
347 foreclosure mediation program to community-based resources when  
348 appropriate and to the mortgage assistance programs. Such mediators  
349 shall not give legal advice to any party in mediation.

350 Sec. 4. Section 49-31n of the general statutes is repealed and the  
351 following is substituted in lieu thereof (*Effective from passage*):

352 (a) Prior to July 1, 2014: (1) Any action for the foreclosure of a  
353 mortgage on residential real property with a return date during the  
354 period from July 1, 2008, to June 30, 2009, inclusive, shall be subject to  
355 the provisions of subsection (b) of this section, and (2) any action for  
356 the foreclosure of a mortgage on (A) residential real property with a  
357 return date during the period from July 1, 2009, to June 30, 2014,  
358 inclusive, or (B) real property owned by a religious organization with a  
359 return date during the period from October 1, 2011, to June 30, 2014,  
360 inclusive, shall be subject to the provisions of subsection (c) of this  
361 section.

362 (b) (1) For any action for the foreclosure of a mortgage on residential  
363 real property with a return date during the period from July 1, 2008, to  
364 June 30, 2009, inclusive, the mediation period under the foreclosure  
365 mediation program established in section 49-31m, as amended by this  
366 act, shall commence when the court sends notice to each appearing  
367 party that a foreclosure mediation request form has been submitted by  
368 a mortgagor to the court, which notice shall be sent not later than three  
369 business days after the court receives a completed foreclosure  
370 mediation request form. The mediation period shall conclude not  
371 [more than sixty days after the return date for the foreclosure action]  
372 later than the conclusion of the third mediation session between the  
373 mortgagor and mortgagee, except that the court may, in its discretion,  
374 for good cause shown, (A) extend [, by not more than thirty days,] or  
375 shorten the mediation period on its own motion or upon motion of any  
376 party, or (B) extend [by not more than thirty days] the mediation  
377 period upon written request of the mediator. If the court enters an  
378 order extending the mediation period beyond six months after the  
379 return date, the court shall set forth its rationale for entering such  
380 order in such order. In entering such order, the court may rely on the  
381 findings and reports submitted by the mediator and any supplemental  
382 report submitted by a party.

383 (2) The first mediation session shall be held not later than fifteen  
384 business days after the court sends notice to all parties that a  
385 foreclosure mediation request form has been submitted to the court.

386 The mortgagor and mortgagee shall appear in person at each  
387 mediation session and shall have [authority to agree to a proposed  
388 settlement] the ability to mediate, except that (A) if [the mortgagee] a  
389 party is represented by counsel, the [mortgagee's] party's counsel may  
390 appear in lieu of the [mortgagee] party to represent the [mortgagee's]  
391 party's interests at the mediation, provided [such counsel has the  
392 authority to agree to a proposed settlement] the party has the ability to  
393 mediate, the mortgagor attends the first mediation session in person,  
394 and the [mortgagee] party is available (i) during the mediation session  
395 by telephone, and (ii) to participate in the mediation session by  
396 speakerphone, provided an opportunity is afforded for confidential  
397 discussions between the [mortgagee and mortgagee's] party and  
398 party's counsel, [and] (B) following the initial mediation session, if  
399 there are two or more mortgagors, only one mortgagor shall be  
400 required to appear in person at each subsequent mediation session  
401 unless good cause is shown, provided the other mortgagors are  
402 available (i) during the mediation session, and (ii) to participate in the  
403 mediation session by speakerphone, [provided an opportunity is  
404 afforded for confidential discussions among the mortgagors and such  
405 mortgagors' counsel. The] and (C) if a party suffers from a disability or  
406 other significant hardship that imposes an undue burden on such  
407 party to appear in person, the mediator may grant permission to such  
408 party to participate in the mediation session by telephone. A  
409 mortgagor's spouse, who is not a mortgagor but who lives in the  
410 subject property, may appear at each mediation session, provided all  
411 appearing mortgagors consent to such spouse's appearance or such  
412 spouse shows good cause for his or her appearance and the  
413 mortgagors consent to the disclosure of nonpublic personal  
414 information to such spouse. If the mortgagor has submitted a complete  
415 package of financial documentation in connection with a request for a  
416 particular foreclosure alternative, the mortgagee shall have thirty-five  
417 days from the receipt of the completed package to respond with a  
418 decision and, if the decision is a denial of the request, provide the  
419 reasons for such denial. If the mortgagor has, in connection with a  
420 request for a foreclosure alternative, submitted a financial package that

421 is not complete, or if the mortgagee's evaluation of a complete package  
422 reveals that additional information is necessary to underwrite the  
423 request, the mortgagee shall request the missing or additional  
424 information within a reasonable period of time. If the mortgagee's  
425 evaluation of a complete package reveals that additional information is  
426 necessary to underwrite the request, the thirty-five-day deadline for a  
427 response shall be extended but only for so long as is reasonable given  
428 the timing of the mortgagor's submission of such additional  
429 information and the nature and context of the required underwriting.  
430 Following each mediation session, the mediator shall file with the  
431 court a report indicating, to the extent applicable, (i) the extent to  
432 which each of the parties complied with the requirements set forth in  
433 this subdivision, including the requirement to engage in conduct that  
434 is consistent with the objectives of the mediation program, (ii) whether  
435 the mortgagor submitted a complete package of financial  
436 documentation to the mortgagee, (iii) a general description of the  
437 foreclosure alternative being requested by the mortgagor, (iv) whether  
438 the mortgagor has previously been evaluated for similar requests,  
439 whether prior to mediation or in mediation, and, if so, whether there  
440 has been any apparent change in circumstances since a decision was  
441 made with respect to that prior evaluation, (v) whether the mortgagee  
442 has responded to the mortgagor's request for a foreclosure alternative  
443 and, if so, a description of the response and the apparent  
444 reasonableness of such response, (vi) whether the mortgagor has  
445 responded to an offer made by the mortgagee on a reasonably timely  
446 basis, and if so, an explanation of the response, (vii) whether the  
447 mortgagee has requested additional information from the mortgagor  
448 and, if so, the stated reasons for the request and the date by which  
449 such additional information shall be submitted so that information  
450 previously submitted by the mortgagor may still be used by the  
451 mortgagee in conducting its review, (viii) whether the mortgagor has  
452 supplied, on a reasonably timely basis, any additional information that  
453 was reasonably requested by the mortgagee, and, if not, the stated  
454 reason for not doing so, (ix) if information provided by the mortgagor  
455 is no longer current for purposes of evaluating a foreclosure

456 alternative, a description of the out-of-date information and an  
457 explanation as to how and why such information is no longer current,  
458 (x) whether the mortgagee has provided a reasonable explanation of  
459 the basis for a decision to deny a request for a loss mitigation option or  
460 foreclosure alternative and whether the mediator is aware of any  
461 material reason not to agree with that decision, (xi) whether the  
462 mortgagee has complied with the timeframes set forth in this  
463 subdivision for responding to requests for decisions, and (xii) if a  
464 subsequent mediation session is expected to occur, a general  
465 description of the expectations for such subsequent session and, if not  
466 otherwise addressed in the report, whether the parties satisfied the  
467 expectations set forth in previous reports. Such report shall be filed  
468 with the court not later than the third business day following the  
469 mediation session, and a copy shall be emailed to the parties to  
470 mediation when it is filed. The parties shall have the opportunity to  
471 submit their own supplemental information following the filing of the  
472 report, provided such supplemental information shall be submitted  
473 not later than five business days following the mediation session. Any  
474 request by the mortgagee to the mortgagor for additional or updated  
475 financial documentation shall be made in writing. The court may  
476 impose sanctions on any party or on counsel to a party if such party or  
477 such counsel engages in intentional or multiple instances of conduct  
478 during the mediation process that is contrary to the objectives of the  
479 mediation program. Any sanction that is imposed shall be  
480 proportional to the conduct and consistent with the objectives of the  
481 mediation program. Available sanctions shall include, but not be  
482 limited to, terminating mediation, ordering the mortgagor or  
483 mortgagee to mediate in person, forbidding the mortgagee from  
484 charging the mortgagor for the mortgagee's attorney's fees, awarding  
485 attorney's fees, imposing fines payable to the court or aggrieved party,  
486 and, in egregious situations, barring interest accrual with regard to the  
487 underlying loan. The court shall not award attorney's fees to any  
488 mortgagee for time spent in any mediation session if the court finds  
489 that such mortgagee has failed to comply with this subdivision, unless  
490 the court finds reasonable cause for such failure.

491 (3) Not later than two days after the conclusion of [the first] each  
492 mediation session, the mediator shall determine whether the parties  
493 will benefit from further mediation. The mediator shall file with the  
494 court a report setting forth such determination and mail a copy of such  
495 report to each appearing party. If the mediator reports to the court that  
496 the parties will not benefit from further mediation, the mediation  
497 period shall terminate automatically. If the mediator reports to the  
498 court after the first or second mediation session that the parties may  
499 benefit from further mediation, the mediation period shall continue.

500 (4) If the mediator has submitted a report to the court that the  
501 parties may benefit from further mediation pursuant to subdivision (3)  
502 of this subsection, not more than two days after the conclusion of the  
503 mediation, but not later than the termination of the mediation period  
504 set forth in subdivision (1) of this subsection, the mediator shall file a  
505 report with the court describing the proceedings and specifying the  
506 issues resolved, if any, and any issues not resolved pursuant to the  
507 mediation. The filing of the report shall terminate the mediation period  
508 automatically. If certain issues have not been resolved pursuant to the  
509 mediation, the mediator may refer the mortgagor to any appropriate  
510 community-based services that are available in the judicial district, but  
511 any such referral shall not cause a delay in the mediation process.

512 (5) The Chief Court Administrator shall establish policies and  
513 procedures to implement this subsection. Such policies and procedures  
514 shall, at a minimum, provide that the mediator shall advise the  
515 mortgagor at the first [mediation session] meeting required by  
516 [subdivision (2) of this subsection] subdivision (4) of subsection (c) of  
517 section 49-31l, as amended by this act, that [:(A) Such mediation does  
518 not suspend the mortgagor's obligation to respond to the foreclosure  
519 action; and (B)] a judgment of strict foreclosure or foreclosure by sale  
520 may cause the mortgagor to lose the residential real property to  
521 foreclosure.

522 (6) In no event shall any determination issued by a mediator under  
523 this program form the basis of an appeal of any foreclosure judgment.



524 (7) Foreclosure mediation request forms shall not be accepted by the  
525 court under this subsection on or after July 1, [2012] 2014, and the  
526 foreclosure mediation program shall terminate when all mediation has  
527 concluded with respect to any applications submitted to the court prior  
528 to July 1, 2014.

529 (8) At any time during the mediation period, the mediator may refer  
530 a mortgagor who is the owner-occupant of one-to-four family  
531 residential real property to the mortgage assistance programs, except  
532 that any such referral shall not prevent a mortgagee from proceeding  
533 to judgment when the conditions specified in subdivision (6) of  
534 subsection (b) of section 49-311, as amended by this act, have been  
535 satisfied.

536 (9) If the third mediation session concludes without resolution of the  
537 action and with a request for a subsequent mediation session, the court  
538 shall conduct a hearing following such third mediation session and  
539 each subsequent mediation session as to the status of the case and the  
540 reasons for which a resolution has not yet been achieved, except no  
541 such hearing shall be held if, through a motion by a mediator or a  
542 party to the mediation, good cause is shown for postponing such  
543 hearing until the conclusion of the subsequent mediation session. For  
544 purposes of this subdivision, mediation sessions which were continued  
545 with the consent of the mortgagor and mortgagee shall be counted as a  
546 mediation session, provided the first such continued session shall not  
547 count as a separate mediation session.

548 (10) For any case pending as of October 1, 2013, in which mediation  
549 is ongoing, (A) if three or fewer sessions have been held, such case  
550 shall be treated as if no sessions have been held as of said date for  
551 purposes of subdivision (9) of this subsection, and (B) if four or more  
552 sessions have been held, then a hearing may be held under subdivision  
553 (9) of this subsection after either the first or second sessions which  
554 occur on or after October 1, 2013, following the granting of a motion  
555 made by the mediator or a party, and, after the third session occurring  
556 after October 1, 2013, a hearing shall be conducted in accordance with

557 subdivision (9) of this subsection.

558 (c) (1) For any action for the foreclosure of a mortgage on residential  
559 real property with a return date during the period from July 1, 2009, to  
560 June 30, 2014, inclusive, or for any action for the foreclosure of a  
561 mortgage on real property owned by a religious organization with a  
562 return date during the period from October 1, 2011, to June 30, 2014,  
563 inclusive, the mediation period under the foreclosure mediation  
564 program established in section 49-31m, as amended by this act, shall  
565 commence when the court sends notice to each appearing party  
566 scheduling the first foreclosure mediation session. The mediation  
567 period shall conclude [not later than the date sixty days after the return  
568 date for the foreclosure action] not later than the conclusion of the  
569 third mediation session between the mortgagor and mortgagee, except  
570 that the court may, in its discretion, for good cause shown, (A) extend  
571 [by not more than thirty days,] or shorten the mediation period on its  
572 own motion or upon motion of any party, or (B) extend [by not more  
573 than thirty days] the mediation period upon written request of the  
574 mediator. If the court enters an order extending the mediation period  
575 beyond six months after the return date, the court shall set forth its  
576 rationale for entering such order in such order. In entering such order,  
577 the court may rely on the findings and reports submitted by the  
578 mediator and any supplemental report submitted by a party.

579 (2) [The first mediation session shall be held not later than fifteen  
580 business days after the court sends notice to each appearing party in  
581 accordance with subdivision (4) of subsection (c) of section 49-31l. On  
582 and after October 1, 2011, the first mediation session shall be held not  
583 later than thirty-five days after the court sends notice to each  
584 appearing party in accordance with subdivision (4) of subsection (c) of  
585 this section. On and after October 1, 2011, not later than fifteen  
586 business days prior to the date of the initial mediation session, the  
587 mortgagee shall deliver to the mortgagor (A) an account history  
588 identifying all credits and debits assessed to the loan account in the  
589 immediately preceding twelve-month period, and (B) the name,  
590 business mailing address, electronic mail address, facsimile number

591 and direct telephone number of an individual able to process requests  
592 to refinance or modify the mortgage loan at issue or otherwise take  
593 action to avoid foreclosure of the mortgage. Any updates to the  
594 information provided pursuant to subparagraph (B) of this subdivision  
595 shall be provided reasonably promptly to the mortgagor and such  
596 mortgagor's counsel.] The mortgagor and mortgagee shall appear in  
597 person at each mediation session and shall have [authority to agree to  
598 a proposed settlement] the ability to mediate, except that [(i)] (A) if  
599 [the mortgagee] a party is represented by counsel, the [mortgagee's]  
600 party's counsel may appear in lieu of the [mortgagee] party to  
601 represent the [mortgagee's] party's interests at the mediation, provided  
602 [such counsel has the authority to agree to a proposed settlement] the  
603 party has the ability to mediate, the mortgagor attends the first  
604 mediation session in person and the [mortgagee] party is available [(I)]  
605 (i) during the mediation session by telephone, and [(II)] (ii) to  
606 participate in the mediation session by speakerphone, provided an  
607 opportunity is afforded for confidential discussions between the  
608 [mortgagee] party and [mortgagee's] party's counsel, [and (ii)] (B)  
609 following the initial mediation session, if there are two or more  
610 mortgagors who are self-represented, only one mortgagor shall be  
611 required to appear in person at each subsequent mediation session  
612 unless good cause is shown, provided the other mortgagors are  
613 available [(I)] (i) during the mediation session, and [(II)] (ii) to  
614 participate in the mediation session by speakerphone, [provided an  
615 opportunity is afforded for confidential discussions among the  
616 mortgagors and such mortgagors' counsel. The] and (C) if a party  
617 suffers from a disability or other significant hardship that imposes an  
618 undue burden on such party to appear in person, the mediator may  
619 grant permission to such party to participate in the mediation session  
620 by telephone. A mortgagor's spouse, who is not a mortgagor but who  
621 lives in the subject property, may appear at each mediation session,  
622 provided all appearing mortgagors consent to such spouse's  
623 appearance or such spouse shows good cause for his or her appearance  
624 and the mortgagors consent to the disclosure of nonpublic personal  
625 information to such spouse. If the mortgagor has submitted a complete

626 package of financial documentation in connection with a request for a  
627 particular foreclosure alternative, the mortgagee shall have thirty-five  
628 days from the receipt of the completed package to respond with a  
629 decision and, if the decision is a denial of the request, provide the  
630 reasons for such denial. If the mortgagor has, in connection with a  
631 request for a foreclosure alternative, submitted a financial package that  
632 is not complete, or if the mortgagee's evaluation of a complete package  
633 reveals that additional information is necessary to underwrite the  
634 request, the mortgagee shall request the missing or additional  
635 information within a reasonable period of time. If the mortgagee's  
636 evaluation of a complete package reveals that additional information is  
637 necessary to underwrite the request, the thirty-five-day deadline for a  
638 response shall be extended but only for so long as is reasonable given  
639 the timing of the mortgagor's submission of such additional  
640 information and the nature and context of the required underwriting.  
641 Following each mediation session, the mediator shall file with the  
642 court a report indicating, to the extent applicable, (i) the extent to  
643 which each of the parties complied with the requirements set forth in  
644 this subdivision, including the requirement to engage in conduct that  
645 is consistent with the objectives of the mediation program, (ii) whether  
646 the mortgagor submitted a complete package of financial  
647 documentation to the mortgagee, (iii) a general description of the  
648 foreclosure alternative being requested by the mortgagor, (iv) whether  
649 the mortgagor has previously been evaluated for similar requests,  
650 whether prior to mediation or in mediation, and, if so, whether there  
651 has been any apparent change in circumstances since a decision was  
652 made with respect to that prior evaluation, (v) whether the mortgagee  
653 has responded to the mortgagor's request for a foreclosure alternative  
654 and, if so, a description of the response and the apparent  
655 reasonableness of such response, (vi) whether the mortgagor has  
656 responded to an offer made by the mortgagee on a reasonably timely  
657 basis, and if so, an explanation of the response, (vii) whether the  
658 mortgagee has requested additional information from the mortgagor  
659 and, if so, the stated reasons for the request and the date by which  
660 such additional information shall be submitted so that information

661 previously submitted by the mortgagor may still be used by the  
662 mortgagee in conducting its review, (viii) whether the mortgagor has  
663 supplied, on a reasonably timely basis, any additional information that  
664 was reasonably requested by the mortgagee, and, if not, the stated  
665 reason for not doing so, (ix) if information provided by the mortgagor  
666 is no longer current for purposes of evaluating a foreclosure  
667 alternative, a description of the out-of-date information and an  
668 explanation as to how and why such information is no longer current,  
669 (x) whether the mortgagee has provided a reasonable explanation of  
670 the basis for a decision to deny a request for a loss mitigation option or  
671 foreclosure alternative and whether the mediator is aware of any  
672 material reason not to agree with that decision, (xi) whether the  
673 mortgagee has complied with the timeframes set forth in this  
674 subdivision for responding to requests for decisions, and (xii) if a  
675 subsequent mediation session is expected to occur, a general  
676 description of the expectations for such subsequent session and, if not  
677 otherwise addressed in the report, whether the parties satisfied the  
678 expectations set forth in previous reports. Such report shall be filed  
679 with the court not later than the third business day following the  
680 mediation session, and a copy shall be emailed to the parties to  
681 mediation when it is filed. The parties shall have the opportunity to  
682 submit their own supplemental information following the filing of the  
683 report, provided such supplemental information shall be submitted  
684 not later than five business days following the mediation session. Any  
685 request by the mortgagee to the mortgagor for additional or updated  
686 financial documentation shall be made in writing. The court may  
687 impose sanctions on any party or on counsel to a party if such party or  
688 such counsel engages in intentional or multiple instances of conduct  
689 during the mediation process that is contrary to the objectives of the  
690 mediation program. Any sanction that is imposed shall be  
691 proportional to the conduct and consistent with the objectives of the  
692 mediation program. Available sanctions shall include, but not be  
693 limited to, terminating mediation, ordering the mortgagor or  
694 mortgagee to mediate in person, forbidding the mortgagee from  
695 charging the mortgagor for the mortgagee's attorney's fees, awarding

696 attorney's fees, imposing fines payable to the court or aggrieved party,  
697 and, in egregious situations, barring interest accrual with regard to the  
698 underlying loan. The court shall not award attorney's fees to any  
699 mortgagee for time spent in any mediation session if the court finds  
700 that such mortgagee has failed to comply with this subdivision, unless  
701 the court finds reasonable cause for such failure.

702 (3) Not later than two days after the conclusion of [the first] each  
703 mediation session, the mediator shall determine whether the parties  
704 will benefit from further mediation. The mediator shall file with the  
705 court a report setting forth such determination and mail a copy of such  
706 report to each appearing party. If the mediator reports to the court that  
707 the parties will not benefit from further mediation, the mediation  
708 period shall terminate automatically. If the mediator reports to the  
709 court after the first or second mediation session that the parties may  
710 benefit from further mediation, the mediation period shall continue.  
711 [Either party's failure to comply with the documentation requirements  
712 of this section or section 49-31/ shall not be grounds for terminating the  
713 mediation period before a second mediation session is conducted.]

714 (4) If the mediator has submitted a report to the court that the  
715 parties may benefit from further mediation pursuant to subdivision (3)  
716 of this subsection, not more than two days after the conclusion of the  
717 mediation, but not later than the termination of the mediation period  
718 set forth in subdivision (1) of this subsection, the mediator shall file a  
719 report with the court describing the proceedings and specifying the  
720 issues resolved, if any, and any issues not resolved pursuant to the  
721 mediation. The filing of the report shall terminate the mediation period  
722 automatically. If certain issues have not been resolved pursuant to the  
723 mediation, the mediator may refer the mortgagor to any appropriate  
724 community-based services that are available in the judicial district, but  
725 any such referral shall not cause a delay in the mediation process.

726 (5) The Chief Court Administrator shall establish policies and  
727 procedures to implement this subsection. Such policies and procedures  
728 shall, at a minimum, provide that the mediator shall advise the

729 mortgagor at the first [mediation session] meeting required by  
730 [subdivision (2) of this subsection] subdivision (4) of subsection (c) of  
731 section 49-31l, as amended by this act, that: (A) Such mediation does  
732 not suspend the mortgagor's obligation to respond to the foreclosure  
733 action beyond the limited time frame described in subdivision (6) of  
734 subsection (c) of section 49-31l; and (B) a judgment of strict foreclosure  
735 or foreclosure by sale may cause the mortgagor to lose the residential  
736 real property or real property owned by a religious organization to  
737 foreclosure.

738 (6) In no event shall any determination issued by a mediator under  
739 this program form the basis of an appeal of any foreclosure judgment.

740 (7) The foreclosure mediation program shall terminate when all  
741 mediation has concluded with respect to any foreclosure action with a  
742 return date during the period from July 1, 2009, to June 30, 2014,  
743 inclusive.

744 (8) At any time during the mediation period, the mediator may refer  
745 a mortgagor who is the owner-occupant of one-to-four family  
746 residential real property to the mortgage assistance programs, except  
747 that any such referral shall not prevent a mortgagee from proceeding  
748 to judgment when the conditions specified in subdivision (6) of  
749 subsection (c) of section 49-31l, as amended by this act, have been  
750 satisfied.

751 (9) If the third mediation session concludes without resolution of the  
752 action and with a request for a subsequent mediation session, the court  
753 shall conduct a hearing following such third mediation session and  
754 each subsequent mediation session as to the status of the case and the  
755 reasons for which a resolution has not yet been achieved, except no  
756 such hearing shall be held if, through a motion by a mediator or a  
757 party to the mediation, good cause is shown for postponing such  
758 hearing until the conclusion of the subsequent mediation session. For  
759 purposes of this subdivision, mediation sessions which were continued  
760 with the consent of the mortgagor and mortgagee shall be counted as a  
761 mediation session, provided the first such continued session shall not

762 count as a separate mediation session.

763 (10) For any case pending as of October 1, 2013, in which mediation  
764 is ongoing, (A) if three or fewer sessions have been held, such case  
765 shall be treated as if no sessions have been held as of said date for  
766 purposes of subdivision (9) of this subsection, and (B) if four or more  
767 sessions have been held, then a hearing may be held under subdivision  
768 (9) of this subsection after either the first or second sessions which  
769 occur on or after October 1, 2013, following a grant of a motion by the  
770 mediator or a party, and, after the third session occurring after October  
771 1, 2013, a hearing shall be conducted in accordance with subdivision  
772 (9) of this subsection.

773 Sec. 5. (NEW) (*Effective from passage*) (a) In a foreclosure action, the  
774 mortgagee may, notwithstanding any other law or rule to the contrary,  
775 file a motion for judgment of foreclosure simultaneously with a motion  
776 for default for failure to appear, if such mortgagee proves, by clear and  
777 convincing evidence and the use of a proper affidavit, that the real  
778 property that is the subject of the foreclosure action is not occupied by  
779 a mortgagor, tenant or other occupant and not less than three of the  
780 following conditions exist:

781 (1) Statements of neighbors, delivery persons or government  
782 employees indicating that the property is vacant and abandoned;

783 (2) Windows or entrances to the property that are boarded up or  
784 closed off or multiple window panes that are damaged, broken or  
785 unrepared;

786 (3) Doors to the property are smashed through, broken off,  
787 unhinged or continuously unlocked;

788 (4) Risk to the health, safety or welfare of the public or any  
789 adjoining or adjacent property owners that exists due to acts of  
790 vandalism, loitering, criminal conduct or the physical destruction of  
791 the property;

792 (5) An order by municipal authorities declaring the property to be



793 unfit for occupancy and to remain vacant and unoccupied;

794 (6) The mortgagee secured or winterized the property due to the  
795 property being deemed vacant and unprotected or in danger of  
796 freezing; or

797 (7) A written statement issued by any mortgagor or tenant  
798 expressing the clear intent of all occupants to abandon the property.

799 (b) A foreclosure action shall not proceed under the expedited  
800 procedures contemplated under subsection (a) of this section if there is  
801 on the property (1) an unoccupied building undergoing construction,  
802 renovation or rehabilitation that is (A) proceeding diligently toward  
803 completion, and (B) in compliance with all applicable ordinances,  
804 codes, regulations and statutes, (2) a secure building occupied on a  
805 seasonal basis, or (3) a secure building that is the subject of a probate  
806 action to quiet title or other ownership dispute.

807 Sec. 6. (NEW) (*Effective from passage*) In a foreclosure action, a  
808 mortgagor, as defined in subdivision (1) of section 49-31k of the  
809 general statutes, as amended by this act, shall be permitted to plead  
810 special defenses or counterclaims arising out of facts that occurred  
811 after the making of the note or mortgage or after any alleged default  
812 on such note or mortgage, irrespective of whether such pleading  
813 relates to the making, validity or enforcement of the subject note and  
814 mortgage, provided such pleading shall (1) relate to facts that entirely  
815 or primarily precede the commencement of the foreclosure action, (2)  
816 arise out of the relationship between the mortgagor and the  
817 mortgagee, as defined in said section, or its servicer, (3) constitute a  
818 valid special defense or counterclaim in law or equity, and (4) contain  
819 facts alleged with particularity, and, should the court so require,  
820 documented to the extent practicable. No mortgagor may file any  
821 motion, request or demand with respect to such a pleading for so long  
822 as mediation is pending unless the mortgagee first files a motion,  
823 request or demand with respect to such pleading. A court may strike  
824 any such special defense or counterclaim upon a finding that such  
825 pleading was interposed for the primary purpose of improperly

826 delaying the prosecution of the foreclosure action.

827 Sec. 7. Subsection (g) of section 49-10 of the general statutes is  
828 repealed and the following is substituted in lieu thereof (*Effective from*  
829 *passage*):

830 (g) Any assignor of mortgage debt shall report biannually to the  
831 town clerk of the municipality where the property is located regarding  
832 every mortgage assignment involving property located in this state. If  
833 such an assignment is not recorded in the municipal land records, the  
834 assignor shall pay to the State Treasurer for each such assignment a fee  
835 of fifty-three dollars. Thirty-six dollars of such fee shall be deposited  
836 into the General Fund and credited to the community investment  
837 account established pursuant to section 4-66aa. Two dollars of such fee  
838 shall be deposited into the General Fund and credited to the historic  
839 documents preservation account established under section 11-8i. The  
840 State Treasurer shall remit fifteen dollars of such fee to the  
841 municipality in which the property is located, eleven dollars of which  
842 shall become part of the general revenue of such municipality and four  
843 dollars of which shall be used by the municipality for the preservation  
844 of historic documents and deposit into the town clerk fund. The report  
845 shall contain (1) the name, address, telephone number and electronic  
846 mail address of the assignor; (2) a list containing the street address and  
847 municipality in which security for such assigned mortgage debt exists;  
848 and (3) the date of execution of such assignment. Any person who  
849 violates any provision of this subsection shall be subject to a civil  
850 penalty of one hundred dollars for each day of such violation. Each  
851 failure to report any single assignment shall constitute an independent  
852 violation. The Attorney General may institute a civil action in Superior  
853 Court to collect such penalty, which shall be payable to the state.  
854 Recordation of an assignment of mortgage debt is not sufficient notice  
855 of the assignment to the party obliged to pay for purposes of  
856 subsection (d) or (e) of this section.

This act shall take effect as follows and shall amend the following sections:
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Section 1	<i>from passage</i>	49-31k
Sec. 2	<i>from passage</i>	49-31l
Sec. 3	<i>from passage</i>	49-31m
Sec. 4	<i>from passage</i>	49-31n
Sec. 5	<i>from passage</i>	New section
Sec. 6	<i>from passage</i>	New section
Sec. 7	<i>from passage</i>	49-10(g)

**BA**      *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

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**OFA Fiscal Note**

**State Impact:** None

**Municipal Impact:** None

**Explanation**

The bill expands the scope of the foreclosure mediation program located within the Judicial Department and does not result in a fiscal impact. This bill conforms statute to current practice as the foreclosure mediation program already covers all types of settlement options, including short sales and deeds in lieu of foreclosure.

**The Out Years**

**State Impact:** None

**Municipal Impact:** None

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**OLR Bill Analysis****sHB 6355*****AN ACT CONCERNING HOMEOWNER PROTECTION RIGHTS.*****SUMMARY:**

This bill expands the scope of the state's foreclosure mediation program by requiring that the program also address the disposition of property through means other than foreclosure, including short sales and deeds in lieu of foreclosure. The bill adds a requirement that mediators be unbiased and prohibits them from giving legal advice to any party in mediation.

The bill extends the foreclosure mediation program two years, to June 30, 2014, for foreclosure actions with return dates of July 1, 2008 through June 30, 2009. The program already runs until June 30, 2014 for foreclosure actions with return dates of July 1, 2009 through June 30, 2014.

The bill identifies the "objectives of the mediation program" and requires parties to attend foreclosure mediation sessions having the "ability to mediate," which means a general willingness and ability to participate in the mediation process.

The bill establishes a pre-mediation process, during which the mediator and the mortgagor must meet. A newly prescribed mediation information form must be used for foreclosure actions with certain return dates.

The bill requires the delivery of a complete financial package, from the mortgagor to the mortgagee, in connection with a request for a foreclosure alternative.

The bill requires that the mediation period ends by the conclusion of

the third mediation session and removes the 30-day limit on the court's discretion to extend the period. The bill requires the court to include, in its order, the rationale for extending the mediation period beyond six months after the return date.

The bill requires the court to conduct a hearing after the third mediation session and after each subsequent session to determine the status of the case and why resolution was not achieved, if the third mediation session ends without resolution and a request for a subsequent mediation session is made.

The bill allows (1) mortgagors to file special defenses or counterclaims under certain circumstances and (2) foreclosure to proceed under expedited procedures for certain abandoned and vacant properties.

The bill (1) establishes a requirement for assignors to record the assignment of mortgage debt in the land records of the municipality where the property is located and (2) creates a financial penalty for failure to do so.

EFFECTIVE DATE: Upon passage

## **§§ 1 & 3 — FORECLOSURE MEDIATION PROGRAM**

### **§ 3 — *Scope of the Program***

By law, the chief court administrator must, in each judicial district, establish a foreclosure mediation program in actions to foreclose mortgages on residential real property or real property owned by a religious organization.

By law, foreclosure mediation must address all issues of foreclosure, including:

1. reinstatement of the mortgage,
2. assignment of law days,
3. assignment of sale date,

4. restructuring of the mortgage debt, and
5. foreclosure by decree of sale.

The bill expands the scope of foreclosure mediation to include the disposition of the property through means other than foreclosure, including short sales and deeds in lieu of foreclosure.

By law, foreclosure mediation must be conducted by foreclosure mediators who (1) are employed by the Judicial Branch, (2) are trained in mediation and all relevant aspects of the law, (3) know about available community-based resources, and (4) know about the mortgage assistance programs. The bill requires mediators to be unbiased and prohibits them from giving legal advice to any party in mediation.

### **§ 1 — Objectives of the Program**

Objectives of the mediation program include:

1. determining whether or not the parties can reach an agreement that will (a) avoid foreclosure by considering any loss mitigation options available through the mortgagee or (b) expedite or facilitate the foreclosure in a manner acceptable to the parties and
2. an expectation that all parties must try to reach such determination with reasonable speed and efficiency by participating in the mediation process in good faith.

The bill specifies that participating in good faith does not include unreasonable and unnecessary delays and a failure to participate in good faith does not necessarily include acting with malice, intent to injure, or otherwise in bad faith.

### **§ 1 — Definitions**

By law, “mortgagor” means: (1) the owner-occupant of one-to-four family residential real property located in Connecticut who is also the borrower under a mortgage encumbering such residential real

property, which is the primary residence of the owner-occupant, or (2) a religious organization that is the owner of real property located in Connecticut and the borrower under a mortgage encumbering such real property. The bill explicitly excludes from the definition of mortgagor an heir or occupying nonowner of a property encumbered by a reverse annuity mortgage.

The bill defines “mortgagee” as the owner or servicer of the debt secured by a mortgage on residential real property or real property owned by a religious organization securing a loan made primarily for personal, family, religious, or household purposes that is the subject of a foreclosure action. Under current law, a mortgagee is the original owner or its successors or assigns who is the holder of any such mortgage.

Under the bill, "ability to mediate" means exhibiting a general willingness, including a general ability, to participate in the mediation process (1) in a manner consistent with the objectives of the mediation program and (2) in conformity with any obligations imposed by the program, including:

1. a general willingness and ability to respond to questions and specify or estimate when particular decisions will be made or particular information will be provided and
2. a general familiarity with the loan file and the loss mitigation options available to the mortgagor.

## **§ 2 — FORECLOSURE MEDIATION TIMELINES**

Under current law, the foreclosure mediation program establishes separate timelines and requirements depending on the return date (e.g. the day by which certain action must be taken) of the foreclosure action, as follows:

1. return date of July 1, 2008 through June 30, 2009 for residential real property;



2. return date of July 1, 2009 through June 30, 2014, for residential real property; and
3. return date of October 1, 2011 through June 30, 2014, for real property owned by a religious organization.

***Return Date of July 1, 2008 through June 30, 2009 for Residential Real Property***

By law, the foreclosure mediation program for foreclosure actions on residential real property with return dates from July 1, 2008 through June 30, 2009 closed June 30, 2012. With regard to such return dates, on or after July 1, 2012, (1) no foreclosure action may commence and (2) no foreclosure mediation request form may be submitted to the court. This bill reopens and extends the foreclosure mediation program for foreclosure actions on residential real property with return dates from July 1, 2008 through June 30, 2009 by two years, through June 30, 2014. Therefore, the court is prohibited from accepting foreclosure mediation request forms on or after July 1, 2014 for foreclosure actions with return dates from July 1, 2008 through June 30, 2009.

By law, when a mortgagee begins an action for the foreclosure of a mortgage on residential real property with a return date during the period from July 1, 2008 through June 30, 2009 the following process and timeline apply:

1. the mortgagee must give notice to the mortgagor of the foreclosure mediation program and, among other things, provide a foreclosure mediation request form;
2. a mortgagor may request foreclosure mediation by submitting the foreclosure mediation request form to the court and filing an appearance within 15 days after the return date for the foreclosure action; and
3. upon receipt of the foreclosure mediation request form, the court must notify each appearing party that a foreclosure mediation request form has been submitted by the mortgagor.

Under current law, the court may grant a mortgagor permission to submit a foreclosure mediation request form and file an appearance after the 15-day period if good cause is shown, but no foreclosure mediation request form may be submitted and no appearance may be filed more than 25 days after the return date. The bill removes the 25-day limit and allows the court to extend the period so long as good cause is shown.

***Return Date of July 1, 2009 through June 30, 2014 for Residential Real Property; and October 1, 2011 through June 30, 2014 for Real Property Owned by a Religious Organization***

The bill makes several changes to the foreclosure mediation timeline and requirements for foreclosure actions with a return date of July 1, 2009 through June 30, 2014, for residential real property and October 1, 2011 through June 30, 2014, for real property owned by a religious organization.

***Mediation Information Form***

By law, when a mortgagee begins foreclosure action on residential real property with a return date on or after July 1, 2009, or, with respect to real property owned by a religious organization, a return date on or after October 1, 2011, the mortgagee must give notice to the mortgagor of the foreclosure mediation program. The notice must include:

1. a copy of the notice of foreclosure mediation;
2. a copy of the foreclosure mediation certificate form;
3. a blank appearance form; and
4. with respect to an action for the foreclosure of a mortgage on residential real property with a return date on or after October 1, 2011, a mediation information form and a notice containing contact information for authority-approved consumer credit counseling agencies.

The bill limits the use of the current mediation information to

foreclosure actions with a return date from October 1, 2011 through September 30, 2013 and establishes a new mediation information form which must be used for an action to foreclose a mortgage on residential real property with a return date on or after October 1, 2013. The new mediation information form must:

1. instruct the mortgagor on the objectives of the mediation program,
2. explain the process of preliminary meetings with the mediator,
3. instruct the mortgagor to begin gathering financial documentation commonly used in foreclosure mediation; and
4. include a notice containing contact information for authority-approved consumer counseling agencies, which must be in the form that the chief court administrator prescribes.

The bill requires the chief court administrator to design the mediation information form in consultation with banking industry representatives and consumer advocates.

### ***Preparation for Mediation***

By law, the court issues a notice of foreclosure mediation to the mortgagor within three business days after the date the mortgagee returns the writ to the court. Under current law, the notice must (1) instruct the mortgagor to file the appearance and foreclosure mediation certificate forms with the court within 15 days after the return date for the foreclosure action and (2) remind the mortgagor to deliver the completed mediation information form and the accompanying documentation. The bill limits the reminder to complete the mediation information form to actions with a return date on or after October 1, 2011 through September 30, 2013.

By law, authority-approved housing counseling agencies may help prepare the mediation information form. The bill broadens this to allow them to help prepare for mediation in general.

***Assignment of Mediator***

Under current law, the court must schedule a date for foreclosure mediation and notify all appearing parties of the mediation date when it receives the mortgagor's appearance and foreclosure mediation certificate forms, provided the court confirms the defendant in the foreclosure action is a mortgagor and the mortgagor has sent a copy of the mediation certificate form to the plaintiff.

The bill instead requires that the court assign a mediator to the mortgagor at this time and notify all appearing parties of the assignment. The bill prohibits the court from assigning a mediator to the mortgagor if the appearance and foreclosure mediation certificate forms are not received from the mortgagor within 15 days after the return date.

***Account History Requirement***

The bill requires the mortgagee or its counsel, upon receiving the notice of assignment of a mediator and within 24 days of the return date, to e-mail to the mediator:

1. an account history identifying all credits and debits assessed to the loan account and any related escrow account in the immediately preceding 12 months and an itemized statement of the amount needed to reinstate the mortgage, with information, written in plain language, to explain any codes used in the history and statement which are not otherwise self-explanatory;
2. the name, business mailing address, e-mail address, fax number, and direct telephone number of someone who can respond with reasonable adequacy and promptness to questions about the information submitted, and provide prompt updates to such contact information;
3. all reasonably necessary forms and a list of all documentation reasonably needed for the mortgagee to evaluate the mortgagor for common foreclosure alternatives that are available through the mortgagee, if any;

4. a copy of the note and mortgage;
5. information regarding the status of any pending foreclosure avoidance efforts being undertaken by the mortgagee;
6. a copy of any loss mitigation affidavit filed with the court; and
7. at the mortgagee's option, (a) the history of foreclosure avoidance efforts, (b) information regarding the condition of the mortgaged property, and (c) other information the mortgagee determines relevant to meeting the objectives of the mediation program.

#### ***Mediator and Mortgagor Pre-mediation Meetings***

The bill requires the court to schedule a meeting with the mediator and the mortgagor after the mediator receives the account history information. The court must hold the meeting if possible within 38 days following the return date. The notice of the meeting must (1) include the forms and account history supplied by the mortgagee and (2) instruct the mortgagor to complete the forms before the meeting and provide the documentation listed above at the meeting.

The bill requires the mediator, at the meeting, to review the forms and documentation with the mortgagor along with the information supplied by the mortgagee. This review is to (1) discuss the options available to the mortgagor and (2) help the mortgagor complete the forms and provide the documentation necessary for the mortgagee to evaluate the mortgagor for foreclosure alternatives.

The bill allows the mediator to schedule subsequent meetings with the mortgagor and determine whether any mortgagor may be excused from appearing in person at any subsequent meeting.

#### ***Delivery of Forms and Documents to Mortgagee***

The bill requires the mediator, within 73 days following the return date, to facilitate the delivery of the forms and documentation to (1) the mortgagee's counsel via fax or e-mail and (2) at the mortgagee's

election, directly to the mortgagee per the mortgagee's instruction.

***Mediator's Report to the Court and the Court's Notice***

The bill also requires the mediator, within 73 days following the return date, to file a report with the court, based on the mortgagor's attendance at the meetings and the extent the mortgagor completed the forms and furnished the required documentation, or failed to perform such tasks through no fault of the mortgagee. The report must indicate:

1. whether mediation must be scheduled with the mortgagee,
2. whether the mortgagor attended scheduled meetings with the mediator,
3. whether the mortgagor fully or substantially completed the forms and provided the documentation requested by the mortgagee,
4. the date on which the mortgagee supplied the forms and documentation to the mediator, and
5. any other information the mediator determines to be relevant to the objectives of the mediation program.

The bill specifies that no meeting or communication between the mediator and mortgagor should be treated as an impermissible *ex parte* communication.

If the mediator determines that the mortgagee must participate in mediation, the court must promptly issue notice of this to all parties and schedule a mediation session between the mortgagee and mortgagor. The bill requires that the first mediation session be held within five weeks following the final meeting between the mediator and the mortgagor.

If the mediator determines that no sessions between the mortgagee and mortgagor should be scheduled, the court must promptly issue

notice of this to all parties and mediation must be terminated. The bill allows any mortgagor wishing to contest this determination to petition the court and show good cause for being included in the mediation program, including (1) a material change in financial circumstances or (2) a misapprehension of facts by the mediator.

### ***Court Referral to Mediation***

Under current law, the court may refer a foreclosure action to the foreclosure mediation program at any time if (1) the mortgagor has filed an appearance and (2) the court sends a notice to each appearing party within three business days after making the referral. The bill limits the referral to when good cause is shown. The bill specifies that, when determining whether good cause exists, the court must consider (1) whether the parties are likely to benefit from mediation and (2) in the case of a referral after prior attempts at mediation have been terminated, whether there has been a material change in circumstances.

Under current law, the court's referral notice schedules the first foreclosure mediation session within 35 days after the date of the referral. The bill instead requires the referral notice to assign a mediator and require the parties to participate in the pre-mediation process (described above). The court must establish deadlines to ensure that the pre-mediation process is completed as expeditiously as circumstances warrant and permit.

### ***Special Pleadings during the Eight-month Stay***

Under current law, there is an eight-month stay on pleadings from the return date of the foreclosure action. The bill allows the mortgagor to file an answer, special defenses, or counterclaims during this period.

## **§ 4 — MEDIATION PERIOD, INFORMATION REQUIRED, AND TERMINATION**

By law, the mediation period, information required, and mediation termination depend on the return date of the foreclosure action, as follows:

1. return date of July 1, 2008 through June 30, 2009 for residential real property;
2. return date of July 1, 2009 through June 30, 2014 for residential real property; and
3. return date of October 1, 2011 through June 30, 2014 for real property owned by a religious organization.

The following information applies to all return dates unless otherwise stated.

### ***Conclusion of the Mediation Period***

Under current law, the mediation period must conclude within 60 days after the return date for the foreclosure action except the court has the discretion to, for good cause shown, (1) extend, up to 30 days, or shorten the mediation period on its own motion or upon motion of any party, or (2) extend by up to 30 days the mediation period upon written request of the mediator. The bill instead requires that the mediation period ends by the end of the third mediation session. It removes the 30-day limit on the court's discretion to extend the period.

If the court orders mediation to extend beyond six months after the return date, its order must include its rationale. The bill allows the court to rely on the findings and reports submitted by the mediator and any supplemental report submitted by a party in its decision to extend the mediation program.

### ***Appearance at Mediation Sessions***

Current law requires that the mortgagor and mortgagee appear in person at each mediation session and with authority to agree to a proposed settlement. The bill requires, instead, that the parties appear at each session with the ability to mediate. Current law makes an exception for a mortgagee who is represented by counsel under certain circumstances. The bill makes this exception apply to all parties, but requires that the mortgagor attend the first mediation session in person.



Under current law, following the first mediation session, if there are two or more mortgagors, only one mortgagor must appear in person at each subsequent mediation session unless good cause is shown, if the other mortgagors are available (1) during the mediation session, and (2) to participate in the mediation session by speakerphone, if an opportunity is afforded for confidential discussions among the mortgagors and the mortgagors' counsel. The bill removes the condition that there must be an opportunity for confidential discussions. For foreclosure actions with a return date of July 1, 2009 through June 30, 2014 for residential real property and return date of October 1, 2011 through June 30, 2014 for real property owned by a religious organization, the bill limits this provision to apply to mortgagors who represent themselves.

The bill allows the mediator to grant permission to a party to participate in the mediation session by telephone if the party suffers from a disability or other significant hardship that imposes an undue burden on such party to appear in person.

The bill allows a mortgagor's spouse, who is not a mortgagor but who lives in the subject property, to appear at each mediation session, if (1) all appearing mortgagors consent to the spouse's appearance or the spouse shows good cause for his or her appearance and (2) the mortgagors consent to the disclosure of nonpublic personal information to the spouse.

### ***Complete Financial Package***

If the mortgagor has submitted a complete package of financial documentation in connection with a request for a particular foreclosure alternative, the bill requires the mortgagee to (1) respond with a decision within 35 days from the receipt of the completed package and (2) if the decision is a denial, provide the reasons for the denial.

The bill requires the mortgagee to request any missing or additional information within a reasonable period of time if (1) the mortgagor

submitted a financial package that is not complete, or (2) the mortgagee's evaluation of a complete package reveals that additional information is necessary to underwrite a request for a foreclosure alternative.

The bill allows the mortgagee's response date to be extended beyond the 35-day deadline if the mortgagee's evaluation of a complete package reveals that additional information is necessary to underwrite the request, but only for so long as is reasonable given (1) the timing of the mortgagor's submission of the additional information and (2) the nature and context of the required underwriting.

### ***Mediator's Report***

The bill requires the mediator to file a report with the court following each mediation session. The report must indicate:

1. the extent to which each party complied with the mediation program requirements;
2. whether the mortgagor submitted a complete package of financial documentation to the mortgagee;
3. a general description of the foreclosure alternative being requested by the mortgagor;
4. whether the mortgagor has previously been evaluated for similar requests, and, if so, whether there has been any apparent change in circumstances since the decision in the prior evaluation;
5. whether the mortgagee has responded to the mortgagor's request for a foreclosure alternative and, if so, a description of the response and its apparent reasonableness;
6. whether the mortgagor has responded to an offer made by the mortgagee on a reasonably timely basis, and if so, an explanation of the response;

7. whether the mortgagee has requested additional information from the mortgagor and, if so, the stated reasons for the request and the date by which such additional information must be submitted;
8. whether the mortgagor has supplied, on a reasonably timely basis, any additional information that was reasonably requested by the mortgagee, and, if not, the stated reason for not doing so;
9. if information provided by the mortgagor is no longer current for purposes of evaluating a foreclosure alternative, a description of the out-of-date information and an explanation of why such information is no longer current;
10. whether the mortgagee has provided a reasonable explanation of the basis for a decision to deny a request for a loss mitigation option or foreclosure alternative and whether the mediator is aware of any material reason not to agree with that decision;
11. whether the mortgagee has complied with the bill's timeframes for responding to requests for decisions; and
12. if a subsequent mediation session is expected to occur, a general description of the expectations for that session and, if not already addressed in the report, whether the parties satisfied the expectations described in previous reports.

The bill requires the mediator to file this report with the court within three business days after the mediation session, and email a copy to all the parties.

The bill specifies that the parties have the opportunity to submit their own supplemental information following the filing of the mediator's report; however, the supplemental information must be submitted within five business days following the mediation session. Requests for additional or updated financial documentation must be made in writing.

**Court Sanctions**

The bill allows the court to impose sanctions on any party or on a party's counsel who, during the mediation process, engages in intentional or multiple instances of conduct contrary to the objectives of the mediation program.

Any sanction that is imposed must be proportional to the conduct and consistent with the objectives of the mediation program. Available sanctions include:

1. terminating mediation;
2. ordering the mortgagor or mortgagee to mediate in person;
3. forbidding the mortgagee from charging the mortgagor for the mortgagee's attorney's fees;
4. awarding attorney's fees;
5. imposing fines payable to the court or aggrieved party; and
6. in egregious situations, barring interest accrual with regard to the underlying loan.

By law, the court is prohibited from awarding attorney's fees to a mortgagee for time spent in any mediation session if the mortgagee fails to comply with the requirements of the mediation sessions without good cause.

**Continuation of the Mediation Sessions**

Under current law, the mediator must, within two days after the first mediation session, determine whether the parties will benefit from further mediation. The bill requires this determination to be made within two days after each session.

Under current law, if the mediator reports to the court after the first mediation session that the parties may benefit from further mediation, the mediation period must continue. The bill extends this to the

second session also.

Under current law, for foreclosure actions with a return date of July 1, 2009 through June 30, 2014 for residential real property and return date of October 1, 2011 through June 30, 2014 for real property owned by a religious organization, failure to comply with the documentation requirements of the mediation program is not grounds for terminating the mediation period before a second mediation session is conducted. The bill deletes this provision.

### ***Policies and Procedures***

Under current law, the chief court administrator must establish policies and procedures that, at a minimum, require the mediator to advise the mortgagor at the first mediation session that (1) mediation does not suspend the mortgagor's obligation to respond to the foreclosure action and (2) a judgment of strict foreclosure or foreclosure by sale may cause the mortgagor to lose the property to foreclosure. The bill requires that the mediator provide this advice at the first pre-mediation meeting instead. For foreclosure actions with a return date of July 1, 2008 through June 30, 2009 the bill removes the requirement to advise the mortgagor that mediation does not suspend the mortgagor's obligation to respond to the foreclosure action.

### ***Court Hearing after Third Mediation Session***

The bill requires the court to conduct a hearing following the third mediation session and each subsequent mediation session, if (1) the third mediation session concludes without resolution of the action and (2) there is a request for a subsequent mediation session. The hearing must determine the status of the case and why it has not been resolved. No hearing is needed if a mediator or a party to the mediation, through a motion, shows good cause for postponing the hearing until the conclusion of the subsequent mediation session. The bill establishes that, with the exception of the first continued session, the mediation sessions that continue with the consent of the mortgagor and mortgagee must be counted as a mediation session.

**Cases Pending on October 1, 2013**

For any case pending on October 1, 2013, in which mediation is ongoing, the bill specifies how sessions should be counted for purposes of determining if a hearing should be held. Specifically,

1. if three or fewer sessions have been held, the case must be treated as if no sessions have been held and
2. if four or more sessions have been held, then a hearing may be held after either the first or second sessions which occur on or after October 1, 2013.

A hearing must be conducted after the third session that occurs after October 1, 2013, following the granting of a motion made by the mediator or a party.

**§ 5 — EXPEDITED FORECLOSURE PROCEDURES FOR VACANT AND ADANDONED PROPERTIES*****Expedited Proceedings Permitted***

The bill allows an expedited foreclosure action by allowing a mortgagee to file a motion for judgment of foreclosure simultaneously with a motion for default for failure to appear. This is allowed only if the mortgagee proves by clear and convincing evidence, and with a proper affidavit, that (1) the real property that is the subject of the foreclosure action is not occupied by a mortgagor, tenant, or other occupant and (2) at least three of the following conditions exist:

1. statements of neighbors, delivery persons, or government employees indicate that the property is vacant and abandoned;
2. windows or entrances are boarded up or closed off or multiple window panes are damaged, broken, or unrepaired;
3. doors to the property are smashed through, broken off, unhinged, or continuously unlocked;
4. acts of vandalism, loitering, criminal conduct, or physical destruction of the property create a risk to the health, safety, or

welfare of the public or any adjoining or adjacent property owners;

5. a municipal order declares the property (a) unfit for occupancy and (b) must remain vacant and unoccupied;
6. the mortgagee secured or winterized the property because the property was deemed vacant and unprotected or in danger of freezing; or
7. a written statement by any mortgagor or any tenant expressing the clear intent of all occupants to abandon the property.

### ***Expedited Proceedings Prohibited***

The bill prohibits a foreclosure action from proceeding under expedited procedures if the property includes any of the following:

1. an unoccupied building undergoing construction, renovation, or rehabilitation that is moving toward completion and is in compliance with all applicable ordinances, codes, regulations, and statutes;
2. a secure building occupied on a seasonal basis; or
3. a secure building that is the subject of a probate action to quiet title or other ownership dispute.

## **§ 6 — SPECIAL PLEADINGS FOR MORTGAGORS**

The bill allows a mortgagor in a foreclosure action to plead special defenses or counterclaims arising out of facts that occurred after (1) the making of the note or mortgage or (2) any alleged default on the note or mortgage, regardless of whether the pleading relates to the making, validity, or enforcement of the note and mortgage. It allows this only if the pleading:

1. relates to facts that entirely or primarily precede the foreclosure action;

2. arises from the relationship between the mortgagor and the mortgagee or its servicer;
3. constitutes a valid special defense or counterclaim in law or equity; and
4. contains facts alleged with particularity and documented to the extent practicable, if required by the court.

The bill prohibits a mortgagor from filing any motion, request, or demand with respect to a pleading while mediation is pending unless the mortgagee does so first.

The bill authorizes the court to strike any special defense or counterclaim if it finds that the primary purpose of the pleading was to delay the foreclosure action.

## **§ 7 — ASSIGNMENT AND RECORDING OF MORTGAGE DEBT**

By law, the recording of an assignment of mortgage debt is not sufficient notice of the assignment to the party obliged to pay such mortgage debt. The bill establishes a new reporting requirement for assignors by requiring any assignor of mortgage debt to report to the town clerk of the municipality where the property is located every mortgage assignment involving property located in Connecticut. The report must be submitted twice a year and must contain:

1. the registrant's name, address, telephone number and e-mail address;
2. a list containing the street address and municipality in which security for the assigned mortgage debt exists; and
3. the date of execution of the assignment.

The bill imposes a fee of \$53 for each assignment that is not recorded in the municipal land records. The assignor must pay the fee to the State Treasurer. The bill requires the treasurer to allocate the fee as follows:



1. \$36 must be deposited in the General Fund and credited to the community investment account;
2. \$2 must be deposited in the General Fund and credited to the historic documents preservation account; and
3. \$15 must be given to the municipality in which the property is located (\$11 for the municipality's general revenue and \$4 for the preservation of historic documents and deposited in the town clerk fund).

The bill subjects any person who violates the recording requirements to a civil penalty of \$100 for each day of the violation. Each failure to report any single assignment is an independent violation.

The bill authorizes the Attorney General to institute a civil action in Superior Court to collect such penalty, which must be payable to the state.

## **BACKGROUND**

### ***Related Bill***

HB 6419, favorably reported by the Housing Committee, extends the judicial foreclosure mediation program by two years, until July 1, 2016. This extension applies to foreclosure actions with return dates on or after July 1, 2009 for residential real property and October 1, 2011 for real property owned by a religious organization.

## **COMMITTEE ACTION**

Banks Committee

Joint Favorable Substitute

Yea 11 Nay 6 (03/14/2013)